

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE IDAHO DEPARTMENT OF WATER RESOURCES
AND THE IDAHO DEPARTMENT OF LANDS**

**RELATIVE TO FOREST PRACTICES,
NAVIGABLE WATERS, THE IDAHO DREDGE AND PLACER MINING ACT
AND
THE STREAM CHANNEL PROTECTION ACT**

This Memorandum of Understanding (MOU) is entered into by the Idaho Department of Lands (IDL) and the Idaho Department of Water Resources (IDWR). The provisions contained in this MOU pertain to stream channel alterations, in conjunction with forest practices and dredge and placer mining, which impact navigable waters, endowment lands and/or non-federal forestlands. This MOU supercedes the amended Memorandum of Understanding dated July 9, 2002.

I. PURPOSE:

It is the policy of the State of Idaho to protect the lands, lakes, streams, and rivers within the State of Idaho, and the State of Idaho acquired title upon statehood to the bed of all navigable waters, and endowment lands.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The State Board of Land Commissioners, through IDL, has authority under the Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code, to regulate forest practices; and has authority under the Idaho Dredge and Placer Mining Act, Title 47, Chapter 13, Idaho Code, to protect lands, lakes and streams from damage resulting from dredge and placer mining.

IDWR has authority under Title 42, Chapter 38, Idaho Code, to regulate the alteration of stream channels for the health, safety and welfare of the public and to protect stream channels from alteration for protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality; and has authority under Title 58, Chapter 4, Idaho Code, to interpose any objections to timber sales on state land because of any interference with the conservation of the irrigation water of any watershed.

Silviculture activities including discharges of dredge and fill material for construction and maintenance of forest roads are not prohibited by or subject to regulation under Section 404 of the Clean Water Act and its implementing regulations. *See* 33 U.S.C. § 1344; 33 C.F.R. Part 323. This exemption does not relieve IDL from obtaining other approvals required under the Clean Water Act regulations.

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The responsibilities of IDWR and IDL must be coordinated to provide service to the citizens of Idaho, to administer the policies of the State and to avoid waste and duplication of effort.

III. INTER-AGENCY PROCEDURES:

IDWR and IDL shall, annually, hold IDWR Regional – IDL Area level meetings in the spring at the respective IDL Supervisory Area Offices. The Idaho Department of Environmental Quality, Idaho Department of Fish and Game (Regional Fishery Biologist), and the US Army Corps of Engineers will be invited to attend these spring meetings. Combination of these Area meetings for efficiency reasons is encouraged when endorsed by both IDL and IDWR.

The purpose of the annual meetings is to exchange information on programs, inform each other of pending activities as provided for in sections of this agreement and to discuss matters pertaining to the accomplishment of mutual objectives of stream channel protection.

IDWR and IDL staff shall meet and develop an Administrative Procedures and Guidance Document relative to the Forest Practices Act and the Stream Channel Protection Act to be used as a guide to field staff and to provide a list of principal contacts. Each Department and their respective staff will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each Department will carry out its separate activities in a coordinated and mutually beneficial manner.

IV. OPERATIONS ON ENDOWMENT OR PUBLIC TRUST LANDS:

IDAHO DEPARTMENT OF WATER RESOURCES SHALL:

a. Consider IDL activities that are reviewed at the annual spring meetings or follow-up notification, that meet the requirements of the Forest Practices Act, the Stream Channel Protection Act, and IDAPA 37.03.07, as complying with IDWR procedural requirement for such activities. Any IDL activities (including but not limited to Section V.a. of this MOU) presented at the meeting will not require submission of a Stream Channel Alteration Permit application. IDWR reserves the right to comment on the timing and methods used to complete these projects, to ensure channel stability, for the protection of fish and wildlife habitat, water quality, aquatic life, recreation, and aesthetic beauty.

b. Provide to IDL a copy of all joint applications for permits to alter a stream channel within 20-work days from receipt, in PDF electronic format, which would alter streams on or adjacent to endowment lands, on or adjacent to lands administered by IDL or occupying the beds of navigable streams or beds of lakes and non-federal reservoirs. Notify IDL of activities on non-state lands, which develop subsequent to the annual

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spring meetings that may affect IDL lands, streams or programs. IDL shall consider this notification as meeting the intent of Sections 42-3803 and 42-3804, Idaho Code.

c. Upon request, furnish to IDL copies of all drawing, maps, and specifications relating to applications submitted to IDWR.

d. Include special terms and conditions in permits, which will affect endowment lands or state owned beds of navigable streams as requested by IDL.

e. Provide assistance in identifying the ordinary high water mark on navigable rivers for establishment of jurisdiction purposes for the Stream Channel Protection Act and for title purposes. IDWR and IDL recognize that rivers are dynamic and established land surveys do not always reflect the mean or ordinary high water mark under the Stream Channel Protection Act.

f. Comment to IDL regarding approval under the Stream Channel Protection Act after receiving comments solicited from other agencies in connection with proposals to alter or occupy beds of navigable rivers or as part of dredge and placer mining activities and refer applications or applicants desiring a permit to alter or occupy beds or waters of navigable lakes, non-federal reservoirs, located on navigable rivers to IDL.

g. Upon request by IDL, deny a permit which IDL determines will adversely affect endowment lands.

h. Inform IDL of law, rule and policy changes relating to the Stream Channel Protection Act and provide training to IDL employees concerning Stream Channel Alteration requirements as necessary.

IDAHO DEPARTMENT OF LANDS SHALL:

a. Meet or exceed the procedural requirement of IDWR Stream Channel Alteration Rules and Regulations and Minimum Standards (Rules), adopted by the Idaho Water Resource Board (IWRB), to protect stream channels on State of Idaho Lands and on other lands administered by IDL.

b. Provide maps to IDWR Regional Stream Channel Coordinator at the annual meetings. These maps will identify predetermined areas, including stream name and legal description, where IDL activities may have an effect on stream channels. Such activities may include, but are not limited to, proposed timber sales, mining operations, roads, culverts, bridge construction, maintenance projects, stream channel restoration projects and fishery habitat improvement projects.

c. Provide a Joint Application for Permit (IDWR form No. 3804B) to IDWR for activities not covered under either the IDAPA 37.03.07.055 or .064 proposed to be

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carried out in protected reaches of streams designated in an IWRB adopted comprehensive river plan. For example, stream channel relocation and reconstruction activities require filing a Joint Application for Permit.

d. Notify, in writing, IDWR Regional Stream Channel Specialist or Regional Manager of activities that develop subsequent to the annual meeting that are located in or will likely affect a perennial stream channel, including applications for lease or easements in navigable waters or endowment lands.

e. Review and comment on IDWR annual Recreational Suction Dredging Permit and Attachments and consider it as an activity jointly authorized, review and comment on other Joint Applications submitted and accept an application to IDWR to alter a stream channel as an application to IDL to occupy or alter the bed of a navigable stream or river, including approval as joint review for projects not requiring IDL lease agreements or easements. Indicate whether or not permits from IDL are required, or whether IDL approvals are to be part of IDWR approval.

f. Furnish to IDWR and other interested parties where applicable copies of all applications for dredge and placer mining permits, surface mine reclamation plans, riverbed mineral leases, easements, logging operations or any proposal to alter or occupy the bed of any stream or river.

g. Prepare permits, lease easements as required by Land Board policy, include on each permit issued a statement indicating that a permit from IDWR may be required and provide copies to IDWR when stream channel alterations are proposed.

h. Deny permits, leases or easements upon request of IDWR if IDWR determines that the project would damage a stream channel.

V. OPERATIONS ON PRIVATE LANDS:

IDAHO DEPARTMENT OF WATER RESOURCES SHALL:

a. Consider a completed Notification of Forest Practices and completed Supplemental Notification Form for private timber harvest activities as a stream channel alteration permit, provided all activities meet the requirements of the Forest Practices Act and the Stream Channel Protection Act and IDAPA 37.03.07. Projects not installed or maintained to meet these criteria must be removed.

Projects qualifying for approval under the Notification of Forest Practices and completed Supplemental Notification Form are:

- Installation of round, squash culverts, open arch or open box culverts, forty (40) square feet open end area or less.
- Installation of culverts, less than sixty (60) feet in length, constructed in non-fish-bearing, perennial streams.

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- Construction of bridges on nonpublic roads, seventy-five (75) feet or less in length, that do not require placement of piers within the mean high water marks; cause an encroachment of the stream channel with fill material, or cause wetlands to be filled.
- Construction or reconstruction of fords less than seventy-five (75) feet in overall length and twenty-five (25) feet in width.
- Removal of perennial stream crossing culverts (40 square feet open ended area or less). Removal of culverts must be done during low flows and if practical, during dry stream conditions created by temporary diversion or dewatering. All fill over the culvert, perched material, and fill encroaching on the channel must be removed using machinery equipped with a bucket and placed in stable locations, above the high water mark, seeded and mulched. Once the culvert is removed, the banks need to be sloped back to a stable configuration, seeded and mulched.

Applicants must provide a description of the project, the location by stream name, quarter/quarter, section, township and range. Applicants must also verify that the project is exclusively for forest practices activities and will be installed and maintained in accordance with applicable regulations of the Stream Channel Protection Act and Forest Practices Act.

All new or reconstructed stream crossing structures in any stream supporting a fishery must provide for fish passage.

b. Process Stream Channel Alteration Permits for projects involving Forest Practices and other projects that do not meet the criteria under item V.a. above. When the banks must be armored, when in-channel structures are required to ensure stream stability in conjunction with installation or removal of stream crossings, when using machinery equipped with a blade or operating machinery within the stream channel for stabilization, improved fish passage or placement of woody debris for fish habitat and anytime state water quality standards cannot be met, a Stream Channel Alteration Permit and a Section 404 permit is required.

c. Investigate and enforce any violation of the Stream Channel Protection Act that cannot be resolved under the Forest Practices Act or as requested by IDL. IDWR reserves the right to undertake a separate enforcement action any time it is determined necessary for protection of fish and wildlife habitat and water quality as required by law.

d. Inform IDL of law, rule and policy changes relating to the Stream Channel Protection Act and provide training to IDL employees concerning Stream Channel Alteration requirements as necessary.

e. Include a statement on permits indicating whether the permit also constitutes approval from IDL, that an additional authorization is necessary from IDL, or that a permit is not required, as requested by IDL.

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THE IDAHO DEPARTMENT OF LANDS SHALL:

a. Meet or exceed the procedural requirement of IDWR Stream Channel Alteration Rules and Regulations and Minimum Standards (Rules), adopted by the Idaho Water Resource Board (IWRB), to protect stream channels on State of Idaho Lands and on other lands administered by IDL.

b. Review and comment on IDWR annual Recreational Suction Dredging Permit and Attachments and consider it as an activity jointly authorized, review and comment on other Joint Applications submitted and accept an application to IDWR to alter a stream channel as an application to IDL to occupy or alter the bed of a navigable stream or river, including approval as joint review for projects not requiring IDL lease agreements or easements. Indicate whether or not permits from IDL are required, or whether IDL approvals are to be part of IDWR approval.

c. Ensure that the completed Notification of Forest Practices and Supplemental Notification Form meet stream channel alteration permit criteria for forest practices and stream channel crossing projects. IDL will furnish IDWR's Stream Channel Specialist and other interested parties a copy of all completed Supplemental Notifications.

d. Consider failure to follow requirements of the Forest Practices Act a violation of permit conditions and report to IDWR related NOV's pertaining to stream crossings and stream channel alterations. Work not in compliance with the Notice of Forest Practices and Supplemental Notification Form will be considered a violation of the Stream Channel Protection Act.

e. Coordinate oversight and enforcement with IDWR when violations do not fall under the Forest Practices Act. Violations of the Forest Practices Rules require corrective action and potential mitigation. Normally accepted restoration and mitigation practices for violations of the Forest Practices Act pertaining to stream crossings and stream channel alterations are:

- The removal of materials placed within a stream channel as a result of a silviculture violation.
- Stabilization and re-vegetation of all areas disturbed as a result of a silviculture violation.
- IDL or Idaho Department of Fish and Game fishery enhancement projects permitted by IDWR for the installation or removal of large woody debris from impacted stream channels. Placement of material in a stream channel for activities other than culverts and bridges, and not directed under a Notice of Violation issued by IDWR or IDL, may require filing of an application under Section 42-3803, Idaho Code.

f. Refer applicants not covered by a Forest Practices Notification, and desiring to alter a stream channel to IDWR.

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g. Furnish to IDWR and other interested parties where applicable copies of all applications for dredge and placer mining permits, surface mine reclamation plans, riverbed mineral leases, easements, logging operations or any proposal to alter or occupy the bed of any stream or river.

h. Consider an approved Stream Channel Alteration Permit for the removal of gravel bar or bed material from non-navigable rivers by a flood control district for flood control purposes as final state approval for this activity. IDL has determined that the requirements of the Dredge and Placer Mining Act, Title 47, Chapter 13, or the Surface Mining Act, Title 47, Chapter 15, do not apply, regardless of the disposition or sale of the material removed for this purpose. The operator is not mining materials from a placer deposit and the activity is not a surface mining operation.

i. Inform IDWR of law, rule and policy changes established by the Board of Land Commissioners relating to navigable streams, to dredge and surface mining and the Forest Practices Act. IDL will provide training for IDWR staff as necessary.

j. Deny permits, leases or easements upon request of IDWR if IDWR determines that the project would damage a stream channel.

VI. MAINTENANCE AND REVISION PROCEDURES:

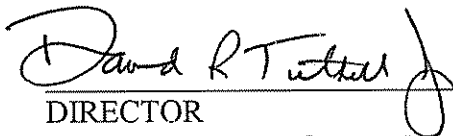
The Idaho Department of Lands and Idaho Department of Water Resources will hold a state level meeting in Boise, whenever mutually agreed to be necessary, to discuss a broad policy, standards and procedures of mutual interest and to consider the adequacy of the terms of this memorandum. This Memorandum of Understanding may be amended by mutual consent of the parties hereto as often as necessary to maintain the stated objectives and may be terminated by either party by providing written notice thirty (30) days prior to the termination date.



DIRECTOR

Idaho Department of Lands

11-7-07
Date



DIRECTOR
Idaho Department of Water Resources

Oct 25, 2007
Date